THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19700 OF 2005

DATED:6.9.2005

Between:

Sri Alamanda Demudu,

S/o.Jagannadham, Boddam Village

Vepanda Mandal, Vizianagaram District and others

…Petitioners

And

Mandal Revenue Officer,

Vepada Mandal, Vizianagaram District and others

…Respondents

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ORDER:

The petitioners, who are five in number, are in occupation of small portion of Government land admeasuring 60 Sq.yards each in S.No.138 of Boddam Village, Vepada Mandal, Vizianagaram District. The petitioners have put up small kiosks (buddies) and eking out their livelihood by carrying on business/avocation as tailor/barber/tea vendor/cycle shop/pan shop. The second respondent herein issued a notice dt.12.7.2005 to the petitioners informing that petitioners have occupied the road which is causing inconvenience to the people coming to weekly shandy and they were asked to show cause as to why these encroachments should not be

removed. They were also given time till 24.7.2005 to voluntarily remove the encroachments.

The petitioners jointly submitted explanation to second respondent *inter alia* stating that the encroachment by the petitioners was found to be unobjectionable and that the suit filed by a neighbour was dismissed by the Civil Court. It was also brought to the notice of second respondent that the weekly shandy was suspended by reason of the orders of this Court in W.P.No.2946 of 2005. Even before second respondent could consider the explanation and pass appropriate orders, petitioners approached this Court presumably for the reason that first respondent by Memo dt.30.8.2005 directed the Mandal Revenue Inspector, and the Mandal Surveyor, Vepada to be present during inspection by the Assistant Executive Engineer, Roads and Buildings Department, Bheemunipatnam on 6.9.2005 at the site. The petitioners apprehend that the respondents might attempt to remove the huts/kiosks put up in the land.

Learned counsel for the petitioners has made submissions for a considerable length of time. It is mainly submitted that there was no weekly shandy at the place and that in the past the Mandal Revenue Officer also came to the conclusion that occupation/encroachment by the petitioners of Government land is not objectionable. Secondly he would urge that even if it is the Government land, necessary procedure contemplated under A.P.Land Encroachment Act, 1905 has not been followed and second respondent is not competent to evict the petitioners.

Learned Assistant Government Pleader for Revenue (General) and learned Assistant Government Pleader for Roads and Buildings opposed the writ petition. They submit that as petitioners have encroached road from Visakhapatnam to Aruku and they are causing inconvenience to the commuters of the road as well as weekly shandy, necessary action was taken by the Deputy Executive Engineer, Roads and Buildings Department Srungavarapukota, Vizianagaram District. According to the learned counsel, as the road is Roads and Buildings Department's road, there is no necessity for the Mandal Revenue Officer to initiate action under the Land Encroachment Act. They however do not deny the submission of the learned counsel for the petitioner that second respondent has not passed any orders after considering explanations submitted by the petitioners to the show cause notice dt.12.7.2005.

The petitioners are admittedly in occupation of Government land, which is Roads and Buildings Department road. Therefore, second respondent rightly issued notice calling upon the petitioners to remove the encroachments and also directing them to submit explanations. Though the petitioners submitted explanations, the same are not disposed of as yet. Further, by Memo dt.30.8.2005, the Mandal Revenue Officer did not direct his subordinates to remove the encroachments, but only directed Mandal Revenue Inspector and Mandal Surveyor to be present during the inspection by Assistant Executive Engineer, Roads and Buildings Department, Bheemunipatnam.

In that view of the matter, the apprehension of the petitioners that they might be removed without due process of law is misconceived. However, to dispel any

such apprehension, this Writ Petition is disposed of directing second respondent to consider the explanation submitted by the petitioners and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order. Till then, if the petitioners are still in possession of the encroachments, there shall be *status quo* as on today. No costs.

The Writ Petition is accordingly disposed of. No costs.

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6.9.2005 (V.V.S.RAO, J)

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